

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD WATKINS, JR.,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	No. 02-CV-4819
v.	:	
	:	
BOARD OF DIRECTORS OF	:	
CITY TRUSTS, <u>et al.</u> ,	:	
	:	
Defendants.	:	

DEFENDANTS' MOTION TO DISMISS

Defendants, by their attorneys, file this Motion to Dismiss the Complaint for the following reasons:

- A. Watkins has failed to state a claim under the FMLA (Count I) because Girard is subject to Eleventh Amendment immunity and, in any event, Watkins cannot satisfy the eligibility requirements for FMLA leave.
- B. Watkins has failed to state a claim for violations of due process (Count II) because he failed to follow the available due process under the collective bargaining agreement.
- C. Watkins has failed to state a claim for equal protection (Count III) because he has failed to allege discriminatory intent.
- D. Watkins' state law claim for breach of contract (Count IV) is preempted by the collective

bargaining agreement and applicable labor law.

Defendants incorporate by reference the attached Memorandum of Law in support of this Motion to Dismiss.

OF COUNSEL:

Pelino & Lentz, P.C.
One Liberty Place
Thirty-Second Floor
1650 Market Street
Philadelphia, PA 19103-7393
(215) 665-1540

Howard A. Rosenthal
Kevin C. Rakowski
Attorneys for Defendants